REMARKS

This Amendment is in response to the Non-Final Office Action of August 4, 2008.

The Examiner has rejected claims 1-7, 9-14, 17 and 20 under 35 U.S.C. 103(a) as being unpatentable over Oh et al. (US 2007/0106917 A1). The Examiner has rejected claims 8, 15-16 and 18-19 under 35 U.S.C. 103(a) as being unpatentable over Oh et al. (US 2007/0106917 A1), in view of Kressin (US 6,535,238 B1).

In response to the 35 USC 101 rejections, Applicant has cancelled claims 17-19 and in their place is submitting new claims 21-22 directed to computer readable medium claims. It is therefore respectfully submitted that the 35 USC 101 rejections have been addressed.

In response to the 35 USC 112 rejection of claim 14, Applicant has amended claim 14.

In response to the 35 USC 103 claim rejections, Applicant has amended the independent claims to including a combination of limitations found in various original claims and to add additional clarifying language. Applicant has also added limitations that the software program is a video encoder and that the performance levels correspond to encoding levels, where each level is an encoding configuration. It is respectfully submitted that the amended claims describe patentable subject matter.

The claimed invention is directed to the problem of having a software program, such as a video encoder, "gracefully" coexisting with other software. As described in paragraph [0003], a complex software application may consume too large a percentage of the processing power of a processor to permit another software application to load and execute properly. In the claimed invention, the adjustable software program is a video encoder has at least two different performance levels where each performance level corresponds to an encoding level.

As described in paragraph [0065] and as illustrated in FIG. 10, in one example the video encoder has a set of different encoding functions that may be used as options. The encoding level in this example corresponds to a selected combination of encoding functions where the mapping between the encoding levels and the encoder configurations are chosen so that a change in the encoding level results in a corresponding change in CPU usage and also affects video encoder quality based on what subset of encoding functions are used at that encoding level. The processor usage is monitored and the performance level of the video encoder is then adjusted down, if necessary, to permit other programs to load and execute properly.

It is respectfully submitted that the cited references, alone or in combination, fails to teach a number of elements of the claimed invention. OH is directed to throttling down the clock rate of a CPU. That is, the entire CPU of OH has its clock rate turned down to save power. The Examiner refers to paragraph [0008], but the power management referred to in Figure 8 is related to reducing the clock rate of the CPU at different levels to save power. In OH, individual software programs do not have different performance levels, where the performance corresponds to an encoding level of a video encoder. Moreover, OH does not teach or suggest adjusting the encoding level to facilitate another software program loading and executing.

The Examiner in section 19 refers to the KRESSIN for teaching a video encoder. While KRESSIN has a video encoder, Applicant can find no teaching or suggestion in KRESSIN to adjust an video encoding level. Applicant respectfully submits that none of the passages cited by the Examiner refer to a video encoder having different video encoding levels.

Applicant also notes that neither refers teaches or suggest combining the references to achieve Applicant's claimed invention. Both references are silent about the problem of maintaining sufficient processor resources to permit a second program to load and execute. Moreover, a direct combination of KRESSIN and OH would not result in the claimed invention. OH turns down the entire CPU clock rate in steps to save power and as previously described, does not adjust a performance level of an individual software program. Moreover, turning down the CPU clock rate reduces CPU throughput and therefore makes it even more difficult to load and execute another software program.

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is now in condition for allowance. The Examiner is invited to contact the undersigned if there are any residual issues that can be resolved through a telephone call.

The Commissioner is hereby authorized to charge any appropriate fees to Deposit Account No. 50-1283.

Respectfully submitted,
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Dated: _Sept 29, 2008_

By: _____

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